

## Remarks

### *A. Status of the Claims*

Claims 1-7, 9-16, 19, 23-25, and 27-29 were pending prior to the Advisory Action mailed October 19, 2009. Claim 1 is amended to recite “a cover configured for placement over the wound dressing member to engage such that the cover engages healthy skin surrounding the wound . . . .” Claim 13 is amended to recite “a single passageway along a longitudinal axis of the body which extends between and through a top surface end and a bottom surface end of the body.” Support for these amendments can be found throughout the specification and drawings as-filed (for example, at FIG. 27). No new matter is added by the amendments. Claims 1-7, 9-16, 19, 23-25, and 27-29 remain pending.

### *B. Statement of Substance of Interview*

Applicant’s attorney, Eagle Robinson, thanks the Examiner for the courtesy of a brief telephonic interview on December 1, discussing rejections of independent claims 1, 12, and 13.

For claim 1, Applicant’s attorney suggested amending claim 1 to recite “a cover configured for placement over the wound dressing member to engage such that the cover engages healthy skin” to make clear that the cover is physically configured to engage healthy skin surrounding the wound, and such that this feature should be given patentable weight. The Examiner indicated that this amendment should be sufficient to overcome the rejection of independent claim 1.

For claim 12, Applicant’s attorney argued that even if Lockwood’s (WO 02/43634) tube 13 “may be molded or attached to the wound dressing member” as noted in the Advisory Action, such that Lockwood arguably suggests a tube that is not attached; *not attached* is different than *spaced from*. Applicant’s attorney further argued that nothing in Lockwood suggests, nor is

there any motivation to modify Lockwood to include, a “thin, flexible member being *spaced from* the suction tube,” as recited in claim 12. The Examiner indicated that the rejection of claim 12 would be reconsidered.

For claim 13, Applicant’s attorney argued that Lockwood does not teach every feature of the claim. The Examiner argued that claim 13 was unclear because it previously recited “(ii) a single passageway along a longitudinal axis of the body which extends between and through a top surface and a bottom surface of the body.” Applicant’s attorney suggested amending the claim to recite that the passageway extends between and through a top end and a bottom end of the body. The Examiner indicated that this should be enough to overcome the rejection of independent claim 13.

**C. Claims 1-6, 9, 12-14, 16, 19, and 23-25 Are Novel Over Lockwood**

Claims 1-6, 9, 12-14, 16, 19, and 23-25 were rejected under 35 U.S.C. § 102(a) as being anticipated by Lockwood et al. (WO 02/43634 A2). Applicants respectfully disagree and traverse.

**1. Independent Claim 1 is Novel over Lockwood**

Amended independent claim 1 recites in-part, with emphasis added:

vacuum bandage system comprising: a wound dressing member . . . , and a cover *configured for placement over the wound dressing member such that the cover engages healthy skin surrounding the wound in order to seal about the wound* and create a sealed environment between the wound and the cover in which a negative pressure can be established.

Lockwood does not disclose at least the emphasized feature.

When a claim recites that a structure is *configured* in a certain way, the way in which the structure is configured is a feature of the structure – *not* merely an intended use or function. *See*,

e.g., *Ex parte Boudry*, Appeal No. 2000-1978, Application No. 08/898,905, at \*6 (BPAI, unpublished). In *Boudry*, the Board stated:

Additionally, we agree with the appellants that the limitation that the adhesive be configured to contact the wearer's body in use to at least temporarily secure the bodyfacing surface of the diaper or absorbent article directly to the wearer's body is a structural limitation in that it requires placement of the adhesive in a location on the bodyfacing surface of the diaper or absorbent article such that it contacts the wearer's body when the diaper or absorbent article is in use (i.e., on the wearer).

*Id.* (emphasis in original). The only contact illustrated in FIG. 27 of Lockwood is between wound contacting layer 220 and tissue within the tunneled wound 116. As such, Lockwood does not disclose the claimed cover “configured for placement over the wound dressing member such that cover engages healthy skin surrounding the wound in order to seal about the wound,” and therefore cannot anticipate independent claim 1. Further, there is no motivation to modify Lockwood to include the claimed features. Applicants therefore respectfully request reconsideration and withdrawal of the rejections.

## **2. Independent Claim 12 is Novel over Lockwood**

Independent claim 12 recites, in part, with emphasis added:

A wound insert . . . comprising: a thin, flexible member including a plurality of discrete passageways . . ., the thin, flexible member being *spaced from the suction tube*, wherein the thin, flexible member includes a top surface, a bottom surface, and side surfaces and the passageways comprise bores through the body extending from one side surface to another and bores through the body extending from the top surface to the bottom surface.

Lockwood does not disclose at least the emphasized feature. For example, the suction tube 13 of Lockwood directly contacts and is connected to “wound dressing member 20,” as shown in FIG. 5 of Lockwood. In fact, “tube 13 may be molded as part of member 20 or attached to the member by welding, adhesion, or other known techniques.” Lockwood, at p. 12, line 32 – p. 13, line 1. Even if this statement suggests that its tube may not be connected to wound dressing

member 20, Lockwood does not suggest that its tube 13 could be *spaced from* wound dressing member 20. As such, Lockwood does not disclose a wound insert comprising a thin flexible member being *spaced from* the suction tube, as recited in claim 12. Lockwood therefore cannot anticipate claim 13, and there is no motivation to modify Lockwood to include the claimed features.

### **3. Independent Claim 13 is Novel**

Independent claim 13 now recites, in part, with emphasis added:

A wound insert . . . comprising: a body made of a generally non-porous, flexible material, wherein the body is cylindrical in shape, wherein a height of the cylindrical body is substantially greater than a diameter of the cylindrical body, and further wherein the body includes either (i) a solid top surface and a solid bottom surface, or (ii) a single passageway along a longitudinal axis of the body which extends between and through a top end and a bottom end of the body.

Lockwood does not disclose at least the emphasized features. For example, member 219 of Lockwood does not have a solid top surface and a solid bottom surface. *See, e.g.*, Lockwood, at FIG. 27 (showing open, conical upper structure). Further, member 219 does not include a single passageway along a longitudinal axis of the body which extends between and through a top end and a bottom end of the body. Lockwood therefore cannot anticipate claim 13, and there is no motivation to modify Lockwood to include the claimed features.

### **4. Dependent Claims 2-6, 9, 14, 16, 19, and 23-25 Are Novel over Lockwood**

Dependent claims 2-6, 9, 14, 16, 19, and 23-25, each depend from one of claims 1 or 12, and by virtue of at least their respective dependencies, cannot be anticipated by Lockwood. Applicants therefore respectfully request reconsideration and withdrawal of the rejections.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejections of claims 1-6, 9, 12-14, 16, 19, and 23-25.

**C. *Claims 7, 11, 15, 28, and 29 Are Patentable Over Lockwood and Gibertoni***

Claims 7, 11, 15, 28, and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lockwood in view of Gibertoni (EP 1,190,732). Applicants respectfully disagree and traverse. In view of the remarks above regarding independent claims 1 and 13, Lockwood does not anticipate independent claims 1 and 13. Gibertoni does not supply the deficiencies. As such, claims 7, 11, 15, 28, and 29 are patentable, at least by virtue of their respective dependencies from independent claims 1 and 13. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP § 2143.03. Applicants therefore respectfully request reconsideration and withdrawal of the rejections of claims 7, 11, 15, 28, and 29.

**D. *Claim 10 Is Patentable Over Lockwood and Hirsch***

Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Lockwood in view of Hirsch et al. (US 5,080,650). Applicants respectfully disagree and traverse. The Office Action does not suggest combining Lockwood and Hirsch, and instead states that Hirsch discloses knowledge within the art that renders claim 10 obvious. However, in view of the remarks above with respect to independent claim 1, claim 10 is patentable at least by virtue of its dependency from claim 1. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP § 2143.03. Applicants therefore respectfully request reconsideration and withdrawal of the rejection of claim 10.

**E. *Claim 27 Is Patentable Over Lockwood and Miner***

Claim 27 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Lockwood in view of Miner et al. (US 3,860,008). Applicants respectfully disagree and traverse.

In addition to the arguments set forth in Applicants Amendment and Response to Office Action mailed June 3, 2009, in view of the remarks above with respect to independent claim 1,

claim 27 is patentable at least by virtue of its dependency from claim 1. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP § 2143.03. Applicants therefore respectfully request reconsideration and withdrawal of the rejection.

**Conclusion**

Applicants believe that the foregoing remarks fully respond to all outstanding matters for this application.

Should the Examiner desire to sustain any of the rejections discussed in relation to this Response, the courtesy of a telephonic interview between the Examiner, the Examiner's supervisor, and the undersigned attorney at 512-536-3083 is respectfully requested.

Respectfully submitted,



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